REMARKS

Claims 1, 3-12, 14-23, and 44-65 are pending in the application upon entry of the amendments and new claims. Claims 1 and 12 have been amended to better describe certain aspects of the invention. Claims 9, 15, and 20 have been amended to correct minor typographical errors. Claims 44-65 have been added to further describe the invention. Claims 2 and 13 have been cancelled and incorporated into claims 1 and 12, respectively. Claims 12 and 14-23 have been withdrawn in view of the Restriction Requirement. Claims 24-43 have been cancelled in view of the Restriction Requirement. Favorable reconsideration in light of the amendments, the new claims, and the remarks which follow is respectfully requested.

Restriction Requirement

During a conversation between Examiner Arnold and Applicants' representative Melanie Brown on or about January 20, 2006, claims were subjected to the following restriction requirement:

Group I (claims 1-11), drawn to a composition containing a particulate material; organic non-vegetable non-fuel high boiling oil; and at least one additive selected from the group consisting of ionic salt, colored particle, or surfactant;

Group II (claims 12-23), drawn to a method of controlling pests including applying the composition of claim 1;

Group III (claims 24-35), drawn to a composition containing a particulate material; and at least one additive selected from the group consisting of plant producing media and salt; and

Group IV (claims 36-43), drawn to a method of controlling pests.

Affirmation of the provisional election to prosecute Group I (claims 1-11) is hereby made.

It is noted that new claims 44-56 fall within Group I, and new claims 57-65 fall within Group II. Upon allowance of the product claims of Group I, Applicants intend to

request **Rejoinder** (per MPEP 821.04) of the unelected claims of Group II, as mentioned below.

The Anticipation Rejection involving Woods

Claims 1, 4, and 11 have been rejected under 35 U.S.C. § 102(b) over Woods (US Patent 2,957,803). Woods relates to an insecticidal composition containing water, emulsifier, urea, lard, and D.D.T.

In order to establish anticipation, each and every feature as set forth in the claim must be disclosed, either expressly or inherently, in a single cited art document. Woods does not disclose the particle materials defined in claim 1. Since Woods does not disclose each and every feature of claim 1, Woods cannot anticipate claims 1, 4, and 11.

The Anticipation Rejection involving Jackson

Claims 1, 2, 4, 6, and 10 have been rejected under 35 U.S.C. § 102(b) over Jackson et al. (US Patent 2,821,500, hereinafter "Jackson"). Jackson relates to an insecticidal composition containing non-porous, water-insoluble granules, gelatin, and mineral oil. The particle size of the granules range between 3 screen mesh and 100 screen mesh (column 2, lines 25-31, and column 3, lines 35-40). The granules include oyster shell, sand, quartz and granite.

In order to establish anticipation, each and every feature as set forth in the claim must be disclosed, either expressly or inherently, in a single cited art document. Jackson does not disclose the particle materials defined in claim 1. Since Jackson does not disclose each and every feature of claim 1, Jackson cannot anticipate claims 1, 2, 4, 6, and 10.

The Anticipation Rejection involving Anderson

Claims 1, 5, 10, and 11 have been rejected under 35 U.S.C. § 102(b) over

Anderson et al. (US Patent 5,783,520, hereinafter "Anderson"). Anderson relates to aqueous dispersion of microcapsules containing clomazone in a water-immiscible high boiling inert organic solvent. The dispersion may contain clays. The Examiner contends that the microcapsules are a particle material.

In order to establish anticipation, each and every feature as set forth in the claim must be disclosed, either expressly or inherently, in a single cited art document. Anderson does not disclose the particle materials defined in claim 1. Since Anderson does not disclose each and every feature of claim 1, Anderson cannot anticipate claims 1, 5, 10, and 11.

The Obviousness Rejection

Claims 1-4 and 6-10 have been rejected under 35 U.S.C. §103(a) over Jackson in view of Puterka et al. (U.S. Patent 6,027,740, hereinafter "Puterka"). Puterka relates to a method for protecting surfaces from arthropod infection. The method includes treating the surface with finely divided calcined kaolins, hydrous kaolins, calcium carbonates and so on (abstract of Puterka).

To reject claims in an application under §103, an examiner must establish a prima facie case of obviousness. A prima facie case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the cited art reference (or references when combined) must teach or suggest all the claim features. See MPEP §706.02(j).

In addition, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the cited art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the Examiner concedes, Jackson does not teach or suggest 1) the use of calcined materials in the composition, 2) the use of hydrous kaolin in the composition, 2) the colorants listed in claim 7, and 3) the use of modified phthalic glycerol alkyl resins, plant oil based materials with emulsifiers, polymeric terpenes, and nonionic detergents in the composition (page 8 of the Office Action). In addition, Jackson does not disclose particulate material selected from talc, kaolin, beneficiated kaolin, bentonites, pyrophyllite, feldspar, chalk, limestone, precipitated calcium carbonate, diatomaceous earth, barites, and calcined calcium carbonate, calcined talc, calcined kaolin, baked kaolin, fired kaolin, hydrophobic treated heat treated kaolin, calcined bentonites, calcined clays, calcined pyrophyllite, calcined silica, calcined feldspar, calcined sand, calcined quartz, calcined chalk, calcined limestone, calcined precipitated calcium carbonate, baked calcium carbonate, calcined diatomaceous earth, calcined barytes, calcined aluminum trihydrate, calcined pyrogenic silica, and calcined titanium dioxide, as required in claim 1.

However, the Examiner contends that it would have been obvious to one of ordinary skill in the art to use calcined kaolin or hydrous kaolin of Puterka in the composition of Jackson. Applicants respectfully disagree for at least the following reasons.

One skilled in the art would NOT have replaced the granular of particle size from 3-100 screen mesh of Jackson with the finely divided powder of Puterka because this replacement would FRUSTRATE the purpose and teachings of Jackson. The purpose of Jackson is to provide granular insecticide composition that is "easily applied by hand" by employing the granular of relatively large particle size (column 1, lines 58-72 of Jackson). Jackson expressly states that the granular insecticide of Jackson is distinct from a powder composition such as the finely divided calcined materials and hydrous kaolin of Puterka as follows:

> **The granular insecticide of the present invention is not to be confused with a dry pulverulent powder** which is the type of pest

> control composition which is conventionally applied as a dust or spray. In contrast, **our granular insecticide is relatively free of unattached pulverulent particles. The physical nature of the product of the present invention permits it to be easily applied by hand and the particles composing it are much easier to direct to the focal area, even though there are air currents, than a powdered product would be under the same atmospheric conditions**; then too, more of the product of the present invention comes to rest upon the selected focal area and not upon other surfaces where an application of the insecticide is undesired, since it is not carried away by the wind. (column 1, lines 58-72 of Jackson, emphasis added)

To distinguish the granular from the dry pulverulent power, Jackson requires granular substrates of particle size from 3-100 screen mesh as follows:

> The granular insecticide of the present invention is characterized by inorganic, water-insoluble, non-porous granules, preferably oyster shell or other calcareous shell of **particle size range from 3 to 100 screen mesh**, inclusive, coated with an oil and an oil-dispersible, organic toxicant for the insect and an organic attractant for the insect. (column 2, lines 25-31 of Jackson, emphasis added)
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> . . .
>
> In the present invention, **the term "granular" is understood to mean the carrier material of particle sizes which will pass through screens ranging from one-fourth inch, i. e., substantially mesh size 3 as the largest size, to 100 screen mesh as the smallest size**, inclusive (Tyler Standard Screen Scale Series of the W. S. Tyler Company). (column 3, lines 45-49 of Jackson, emphasis added)
>
> . . .
>
> The **disadvantage of particles finer than 100 screen mesh** and even particles smaller than 40 mesh is that the product made therefrom is likely to be dusty, and dustiness is not desirable. There usually is a very minor, incidental amount of powder in the granular, inorganic solid material of size range one-quarter inch-100 screen, mesh. (column 4, lines 5-8 of Jackson, emphasis added)

The granular of Jackson has a particle size of 150 µm to 6.73 mm since a 100 mesh screen has openings of 150 µm and a 3 mesh screen has openings of 6.73 mm.

It would NOT have been obvious to one of ordinary skill to replace calcined kaolin or hydrous kaolin of Puterka with the granular of Jackson since Puterka's finely divided powder has a particle size under 150 µm. Puterka's finely divided powder has a median particle size below about 10 µm (column 4, lines 23-27 of Puterka). Puterka's powder is one that Jackson expressly states not to confuse with the granular composition (column 1, lines 58-61 of Jackson). Puterka's powder has an "disadvantage" to Jackson's granular composition because the powder has a particle size of under 150 µm (column 4, lines 5-8 of Jackson). One skilled in the art would not confuse these objectives and results. Consequently, one skilled in the art would NOT have been motivated to use the powders of Puterka in the granular composition of Jackson. Accordingly, withdrawal of this rejection is respectfully requested.

Rejoinder

During prosecution, the claims were subjected to the following restriction requirement, in part:

Group I (claims 1-11), drawn to a composition containing a particulate material; organic non-vegetable non-fuel high boiling oil; and at least one additive selected from the group consisting of ionic salt, colored particle, or surfactant; and

Group II (claims 12-23), drawn to a method of controlling pests including applying the composition of claim 1.

MPEP 821.04 specifies that, where product and process claims are presented in the same application, and if product claims are elected in a Restriction Requirement, after a product claim is found allowable, withdrawn process claims which depend from or include all the limitations of the allowable product claim will be rejoined.

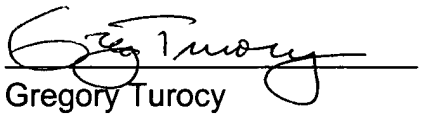
Independent method claim 12 has been amended to include all of the features of

claim 1. Thus, in the event that claim 1 is deemed allowable, per MPEP 821.04, rejoinder of the method claims 12-23 and 57-65 will be respectfully requested.

Should the Examiner believe that a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-1063.

Respectfully submitted,
AMIN & TUROCY, LLP



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